

RECORDING REQUESTED BY:
Cisco Technology, Inc.
170 West Tasman Drive
San Jose, California 95134

WHEN RECORDED, MAIL TO:
Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721
Attention: Barbara Cook, Chief
Northern California Coastal Cleanup
Operations Branch

DOCUMENT: it062263



Pages: 14

Fees. . . * No Fees
Taxes. . .
Copies.,
AMT PAID

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
State Agency

RDE # 004
5/23/2003
10:08 AM

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: APN#s 015-39-046, 015-39-047 entitled "Cisco Systems Site 6, San Jose, California")

This Covenant and Agreement ("Covenant") is made by and between Cisco Technology, Inc. (the "Covenantor"), a wholly owned subsidiary of Cisco Systems, Inc., the current agent of the owner and lessee of property situated in San Jose, County of Santa Clara, State of California, described in **Exhibit "A"**, attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment **as** a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to **as** the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property, totaling approximately 19 acres, is more particularly described and depicted in **Exhibit "A"**, attached hereto and incorporated herein by this reference. The Property is Cisco Systems Site 6 Deed Restriction, 5/2/03

located in the area now generally bounded by the Santa Clara Northside Sewer Station to the north, North First Street to the northeast, by Highway 237 to the south, and by undeveloped land to the west in the County of Santa Clara, state of California (**Exhibit "B"**). This property is more specifically described as Santa Clara County Assessor's Parcel Numbers: 015-39-046, and 015-39-047. Historic Santa Clara County Assessor's Parcel Numbers for these properties were 015-45-005, 015-45-006, 015-45-007, and 015-45-008 respectively.

1.02. The Department approved a Soil Management Plan for the Site on April 27, 2001 that has demonstrated that the preliminary assessment of the site is complete. However, the proposed remediation and development of the property has been delayed. Until remediation is conducted, the Property has been fenced to limit public access and will be managed pursuant to the Soil Management Plan pursuant to Chapter 6.8 of Division 20 of the H&SC. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including lead and arsenic, remain in the soil in and under portions of the Property, the Soil Management Plan requires that a deed restriction be recorded. If at any time it is demonstrated that the property meets applicable residential land use standards, the Department will terminate this Deed Restriction upon request.

1.03. As detailed in the Soil Management Plan, all or a portion of the subsurface soils within 15 feet of the surface of the Property contain hazardous substances, as defined in H&SC section 25316, which include the following metal contaminants of concern in the ranges set forth below: lead (8.0 - 6,080 mg/kg) and arsenic (<5.0 - 49 mg/kg). The soil stratum of concern, Stratum Bf, is a red-brown to black fill material encountered at an approximate depth of 1.5 to 6.5 feet beneath the existing grade, to a maximum depth of approximately 13 feet. Lead Spread Model (Version 7) blood lead calculations for construction workers exposed to contaminated soil onsite predict levels below the established 10 µg/dL threshold at the 99th percentile. The health effects associated with potential arsenic exposure are adequately addressed by the soil management measures designed to minimize lead exposure. The approved Soil Management Plan (04/27/01) requires management practices for impacted soils at the site that will minimize the threat to human health and the environment. The Department concluded that the Property, as subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to commercial and industrial use as described below.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) The Owner shall provide the Department written notice at least fourteen (14) days prior to any activities that may reasonably be expected to disturb the soil at or below 1.5 feet below grade (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining).
- (b) Activities that will disturb the soil at or below 1.5 feet below grade (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) on the Property shall be conducted in accordance with procedures described in the Soil Management Plan and Health and Safety Plan approved on April 27, 2001 as well as any modifications approved by the Department.
- (c) Any contaminated soils brought to the surface by grading, excavation, trenching or

backfilling shall be managed in accordance with all applicable provisions of state and federal law.

- (d) No notice shall be required for activities that disturb only the top 1.5 feet of soil below grade. However, at the conclusion of such activities, the Owner must maintain at least 1.5 feet of clean soil above the contaminated B_f fill layer.

4.03: Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

ARTICLE V

ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it after receipt of written notice from the Department, and expiration of a reasonable cure period shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all

or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Cisco Technology, Inc.

Attn: Jeff van der Wal, Project Manager

170 West Tasman Drive

San Jose, California 95134

To Department:

Barbara Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Cisco Technology, Inc.

By: 

Title: David K. Holland, VP & Treasurer
[Name, title]

Date: May 19, 2003

Department of Toxic Substances Control

By: 

Title: Barbara Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch

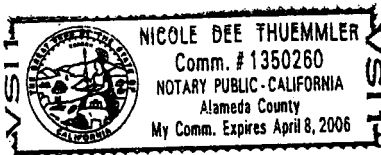
Date: May 22, 2003

'ALL-PURPOSE ACKNOWLEDGMENT

State of Califor
County of Alameda } SS.

On May 23, 2003 before me, Nicole Dee Thuemmler,
(DATE) personally appeared BARBARA J. Cook (NOTARY)
SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity —, and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nicole Dee Thuemmler
NOTARY SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

TITLE(S)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

OTHER

STATE OF CALIFORNIA)
)
COUNTY OF Santa Clara)

On this 19th day of May, in the year 2003,

before me Louise Ropers, Notary Public, personally appeared

David K. Holland, VP & Treasurer,

personally known to me (~~or approved by me on the basis of~~ ~~my evidence~~) to be the person @
whose name(%) is /are subscribed to the within instrument and acknowledged to me that he /
executed the same in his / ~~her / their~~ authorized capacity(~~ies~~), and that by his / ~~her / their~~ signature(s) on
the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.

Signature Louise Ropers

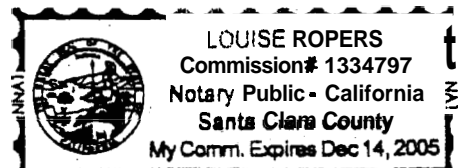


EXHIBIT A

PROPERTY LEGAL DESCRIPTION

January 31, 2003
Project No. 98056-3
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
FOR
ADJUSTED PARCEL A

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

Adjusted Parcel A:

Parcel 3 as shown upon that certain Parcel Map filed for record August 6, 2001 in Book 741 of Maps at Pages 8 through 13, Santa Clara County Records;

And, in Addition thereto, the following area:

Beginning on the westerly boundary, at the common corner of said Parcel 3 and Parcel 4 as shown on said Parcel Map filed for record August 6, 2001 in Book 741 of Maps at Pages 8 through 13, Santa Clara County Records;

Thence along the common line of said Parcels the following 4 courses and distances.

1. North 51°31'16" East, 72.04 feet;
2. North 51°30'10" East, 139.42 feet;
3. North 65°40'01" East, 31.58 feet;
4. North 50°56'29" East, 21.12 feet to a point on the exterior boundary of said Parcel 3;

Thence along said boundary, North 30°16'40" East, 231.43 feet;

Thence leaving said boundary, North 55°35'40" West, 425.42 feet to the westerly line of said Parcel 4;

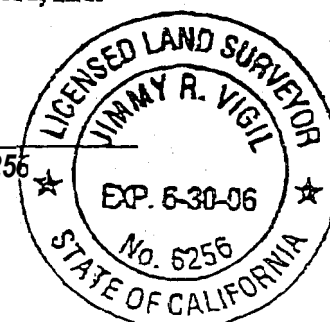
Thence along the exterior of said Parcel 4 the following 3 courses and distances;

1. South 01°47'22" East, 155.32 feet;
2. South 59°21'13" West, 22.46 feet;
3. South 05°02'47" East, 433.16 feet to the Point of Beginning.

Legal Description prepared by Kier & Wright, Civil Engineers & Surveyors, Inc.

1/31/03
Date

Jimmy R. Vigil
L.S. 6256

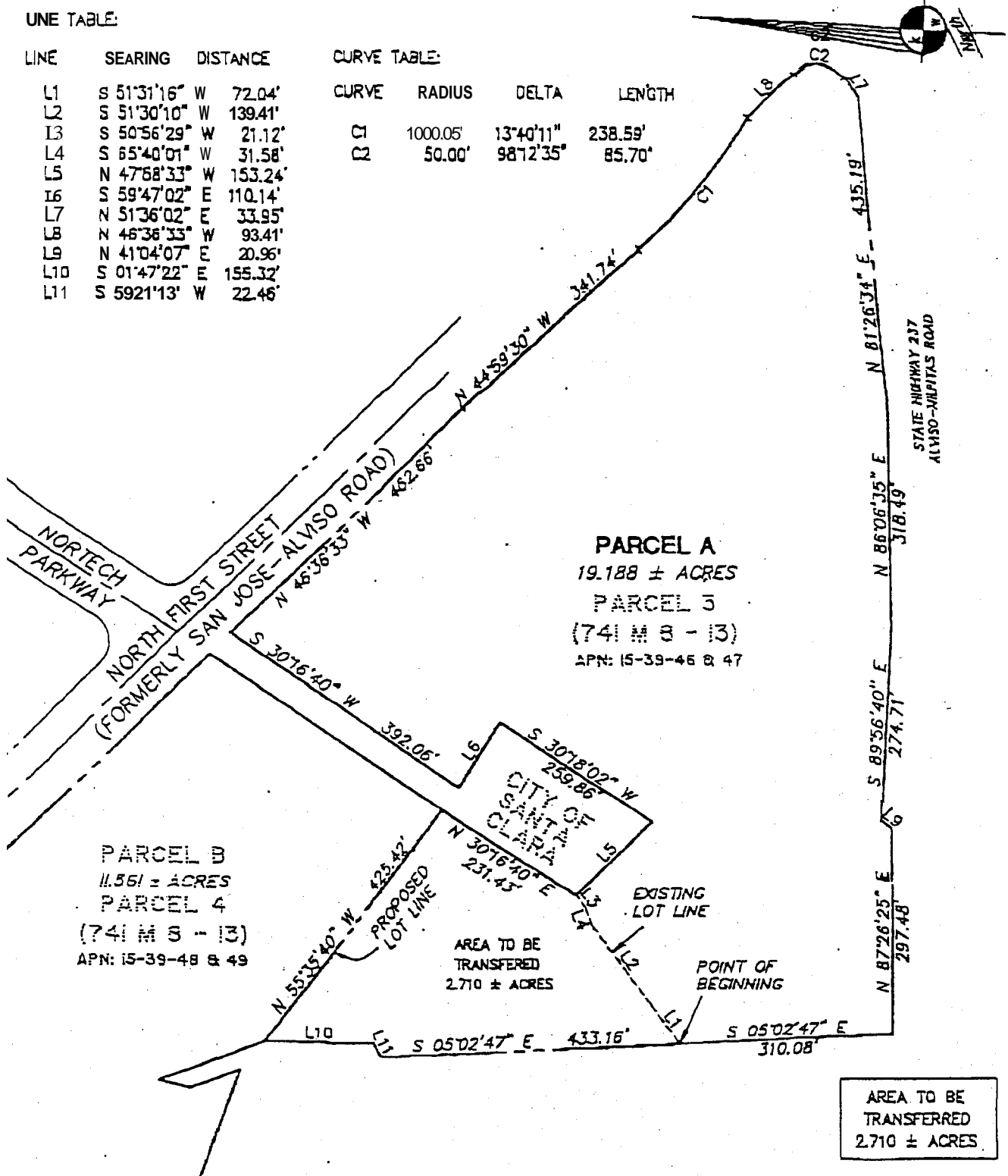


LINE TABLE:

LINE	SEARING	DISTANCE
L1	S 51°31'16" W	72.04'
L2	S 51°30'10" W	139.41'
L3	S 50°56'29" W	21.12'
L4	S 65°40'01" W	31.58'
L5	N 47°58'33" W	153.24'
L6	S 59°47'02" E	110.14'
L7	N 51°36'02" E	33.95'
L8	N 46°36'33" W	93.41'
L9	N 41°04'07" E	20.96'
L10	S 01°47'22" E	155.32'
L11	S 59°21'13" W	22.46'

CURVE TABLE:

CURVE	RADIUS	DELTA	LENGTH
C1	1000.05'	13°40'11"	238.59'
C2	50.00'	98°12'35"	85.70'



PLAT TO ACCOMPANY LEGAL DESCRIPTION
 FOR: LOT LINE ADJUSTMENT

SAN JOSE

CALIFORNIA

EXHIBIT "B"

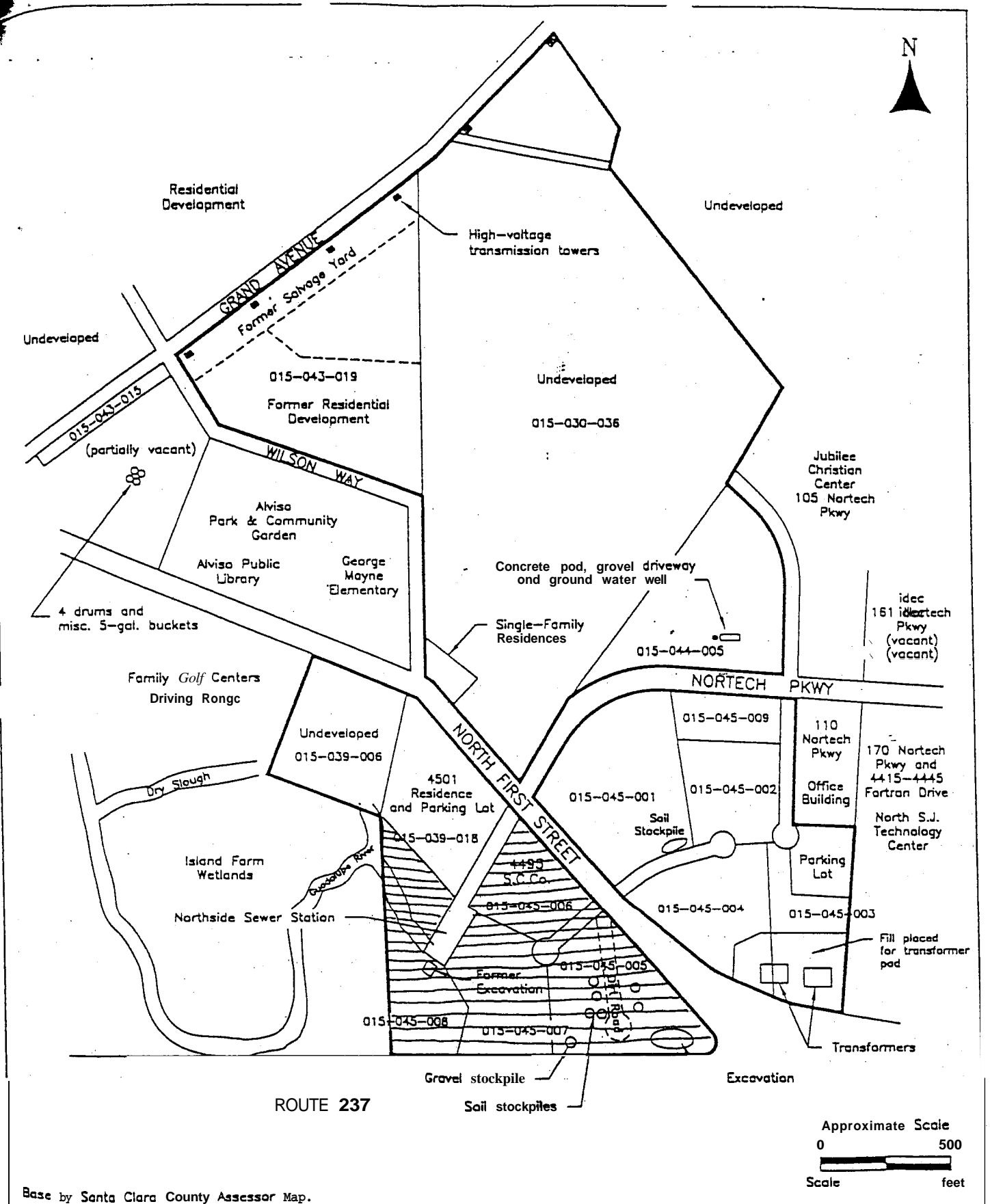


KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 3350 Scott Boulevard, Building 22 (408)727-6663
 Santa Clara, California 95054 FAX (408)727-5641

DATE	JAN., 2003
SCALE	1" = 160'
DR. BY	RMA
JOB	98056-3
SHEET NO.	2 OF 2

EXHIBIT B

SITE MAP



SITE PLAN
CISCO SYSTEMS SITE 6
Alviso, California